

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCI PATERA,
Plaintiff,
v.
CITIBANK, N.A., et al.,
Defendants.

Case No. 14-cv-04533-JSC

**ORDER RE: MOTION TO WITHDRAW
AS COUNSEL FOR PLAINTIFF**

Re: Dkt. No. 30

Presently before the Court is the motion of Peter L. Kutrubes to withdraw as counsel of record for Plaintiff Marci Patera. (Dkt. No. 30.) Neither Plaintiff nor Defendants Citibank, N.A., and CitiMortgage, Inc. have filed a response to the motion, although Plaintiff previously filed a pro se request for an extension of time to file her amended complaint indicating that she was aware of counsel's desire to withdraw and requesting that counsel be relieved. After carefully considering the arguments and briefing submitted, the Court concludes that oral argument is unnecessary, *see* Civ. L.R. 7-1(b), vacates the March 19, 2015 hearing, and GRANTS the motion.

Plaintiff filed this action in October 2014 seeking to prevent foreclosure of her home and alleging thirteen state law causes of action. The Court dismissed the complaint under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim and 12(b)(7) for failure to join a necessary and indispensable party with leave to amend on February 5, 2015. (Dkt. No. 27.) Plaintiff had until February 26 to file an amended complaint joining the co-borrower on the underlying mortgage loans as a party and addressing the issues with her legal claims. On February 12, 2015, Plaintiff filed a pro se request entitled "Request to Relieve Counsel and Request for Extension of Time to File First Amended Complaint" seeking to extend the deadline to file an amended complaint based on the fact that counsel had advised her of his intent to

1 withdraw. (Dkt. No. 29.) Plaintiff's counsel subsequently filed the now pending motion to
 2 withdraw on February 17, 2015. (Dkt. No. 30.) The parties also filed a stipulation extending the
 3 time for Plaintiff to file her amended complaint until March 28, 2015, which the Court approved.
 4 (Dkt. Nos. 31 & 32.)

5 Under the Court's Civil Local Rules, "[c]ounsel may not withdraw from an action until
 6 relieved by order of the Court after written notice has been given reasonably in advance to the
 7 client and to all other parties who have appeared in the case." Civ. L.R. 11-5(a); *Dist. Council No.*
 8 *16 No. Cal. Health & Welfare Trust Fund v. Lambard Enters., Inc.*, No. C 09-05189 SBA, 2010
 9 WL 3339446, at *1 (N.D. Cal. Aug. 24, 2010) (citations omitted). The Local Rule further
 10 provides that "[w]hen withdrawal by an attorney from an action is not accompanied by
 11 simultaneous appearance of substitute counsel or agreement of the party to proceed pro se, leave to
 12 withdraw may be subject to the condition that papers may continue to be served on counsel for
 13 forwarding purposes, unless and until the client appears by other counsel or pro se." Civ. L.R. 11-
 14 5(b).

15 Here, Peter Kutrubes of the Law Offices of Peter L. Kutrubes has filed a sworn declaration
 16 attesting that "since executing the retainer agreement and paying her initial retainer, Plaintiff has
 17 failed to pay the minimum amount of fees owed. ... Since January 2015, I made it increasingly
 18 clear to Plaintiff that I could not continue to represent her without her making arrangements to pay
 19 her past due legal fees and the fees that she was incurring on an ongoing basis. Plaintiff was
 20 unable to make such arrangements. ... At present, Plaintiff owes me a significant amount of fees,
 21 and to continue to represent her given the demands of Plaintiff and her case without adequate
 22 remuneration would constitute a severe financial hardship on me and my firm." (Dkt. No. 30-1 ¶¶
 23 4-5, 8.) Further, it appears that Plaintiff does not oppose counsel's request to withdraw as she
 24 filed her own motion requesting that counsel be relieved and did not respond to counsel's motion
 25 to withdraw. The Court concludes that these reasons support a finding of good cause to grant
 26 Plaintiff's counsel's leave to withdraw representation.

27 Accordingly, the Peter L. Kutrubes' motion to withdraw is hereby GRANTED. The Clerk
 28 shall amend the docket to reflect that Plaintiff is proceeding pro se and update the docket to reflect

1 the following address for her: Marci Patera, PO BOX 968 Alamo, California 94507,
2 (925)588.6090. Plaintiff is obligated to keep the Court informed of her current address.

3 The Case Management Conference is reset for May 7, 2015, at 1:30 p.m., in Courtroom F,
4 15th Floor, U.S. District Court, 450 Golden Gate, San Francisco, California. The parties shall file
5 a Joint Case Management Conference Statement by April 30, 2015.

6 Plaintiff's first amended complaint remains due March 28, 2015. As Plaintiff is proceeding
7 pro se, the Court directs her attention to the Handbook for Pro Se Litigants, which is available
8 along with further information for the parties on the Court's website located at
9 <http://cand.uscourts.gov/proselitigants>. Plaintiff may also contact the Legal Help Center, 450
10 Golden Gate Avenue, 15th Floor, Room 2796, Telephone No. (415)-782-8982, for free assistance
11 regarding her claims.

12 Mr. Kutrubes shall serve a copy of this Order on Plaintiff within three days and shall file
13 proof of service with this Court.

14 This Order disposes of Docket Nos. 30.

15 **IT IS SO ORDERED.**

16 Dated: March 9, 2015

17 
18 Jacqueline Scott Corley
United States Magistrate Judge

United States District Court
Northern District of California